Supreme Court, U.S.
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No. 91-1712

In The

Supreme Court of the United States

October Term, 1991

CONSTRUCTIVIST FOUNDATION, INC., F/K/A LEE FOUNDATION, INC.,

Petitioner,

v.

DEKALB COUNTY BOARD OF TAX ASSESSORS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Does Georgia Statute O.C.G.A. §48-5-29 which is equally applied to all taxpayer appellants and which provides for a clear and certain post-deprivation remedy for such aggrieved taxpayers violate their constitutional rights?

II. Is the government Defendant in an ad valorem property tax appeal proceeding obligated to inform the taxpayer Plaintiff of the laws which set forth when the Plaintiff's case will be placed on the trial calendar?

STATEMENT OF THE CASE

This case is an ad valorem property tax appeal filed pursuant to Georgia Statute O.C.G.A. §48-5-311. Contrary to the Petitioner's assertions in its brief that "the standard procedures" in tax appeals is that the "DeKalb County Attorney's Office filed the initial suit papers in the Superior Court as a service to the taxpayer", the record in this case is notably absent of any such facts. The record indicates that when the case was filed in Superior Court, Petitioner was sent a letter from the Superior Court Clerk's Office dated January 22, 1991, which stated that Petitioner could contact the Judge's calendar clerk at a specific phone number for information concerning the case. Petitioner completed the "Civil Case Initiation Form" which was filed on February 27, 1991 and on it indicated that a related case was assigned to Judge Hunstein. Consequently, the instant case was reassigned to Judge Hunstein and came on for trial during the March/April term of court on April 8, 1991. At that time, Petitioner did not appear at the call of the trial calendar, and case was dismissed by the trial court for want of prosecution and for failure to comply with O.C.G.A. §48-5-29 which sets forth the jurisdictional requirements for a tax appeal in Superior Court.

ARGUMENT
REASONS FOR DENYING THE WRIT

This Court should deny the Petition for a Writ of Certiorari because this Court's own prior decisions are

controlling, and because Petitioner's arguments are without merit, and because the decision below was based upon issues of state law.

In *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco, et al.*, 110 S.Ct. 2238 (1990) this Court clearly established what due process is required to be given to taxpayers by the State. Namely, the due process clause requires the State to afford taxpayers meaningful postpayment relief for taxes already paid pursuant to the state tax law. The meaningful postpayment relief, (i.e., the "clear and certain remedy") which does satisfy due process is in the nature of a refund action for any overpayment of taxes. Only if a state refused to pay back the unlawful taxes would there be a deprivation of due process rights. "It is well established that a State need not provide predeprivation process for the exaction of taxes." *McKesson, supra.*

In *Redding Ford v. California State Board of Equalization*, 722 F.2d 496 (C.A. Cal. 1983), *cert. denied*, 469 U.S. 817, 105 S.Ct. 84 (1984), it was held that California's prepayment refund requirement which prevented state relief because the taxpayer demonstrated that it did not have sufficient assets to pay the assessments did not avoid the jurisdictional bar of the Tax Injunction Act, 28 U.S.C.A. §1341, which was designed to give relief in situations in which there is no plain, speedy, and efficient remedy under state law. This Court's refusal to grant certiorari in *Redding Ford, supra,* indicates that the prepayment refund procedure, even when it prevents taxpayers who are unable to prepay their assessments from obtaining state relief, is a plain, speedy and efficient remedy which satisfies procedural due process requirements.

Petitioner incorrectly asserts that the statutory law in Georgia regarding tax appeals is unconstitutional as violating the equal protection clause. This issue is a matter of state law which has already been decided by the Georgia appellate courts. In *Hancock v. Board of Tax Assessors of Harris County*, 226 Ga. 570, 176 S.E.2d 102 (1970) the Court held that the right of appeal for a taxpayer is not absolute and noted that no section of the State Constitution specifically provides for an appeal. The Court also held that the General Assembly has constitutional authority to enact laws which place conditions upon appeals, and when such conditions are equally applied to all persons, the statute providing therefor is not violative of the equal protection clause. The statutory requirement of the prepayment of taxes before a case may reach the Superior Court is applied to all taxpayers equally, and as stated in Petitioner's brief, wealth is not a suspect class which would trigger strict scrutiny.

This Court has already held that "All citizens are presumptively charged with knowledge of the law." *Texaco Inc. v. Short*, 454 U.S. 516, 102 S.Ct. 781 (1982). When a rule of law uniformly affects all similarly situated citizens, an individual need not be given advance notice before the rule may operate.

O.C.G.A. §48-5-311(f)(4)(A) states in pertinent part that a tax appeal "shall be heard before a jury at the first term following the filing of the appeal." The terms of court in DeKalb County, Georgia where Petitioner's property is located are set forth in O.C.G.A. §15-6-3(37) which states that they commence on the first Monday in January, March, May, July, September and November. Pursuant to Georgia law, Petitioner's case was set for trial

during the March/April term following the filing date of January 22, 1991. The record indicates that upon filing Petitioner was provided by letter with a telephone number to contact regarding its case.

It is well established law that due process does not require the government to notify individuals of the existence of bars to litigation. *E.E.O.C. v. Pan American World Airways, Inc. v. King v. Certain Claimants,* 897 F.2d 1499 (9th Cir. 1990) *cert. denied,* 111 S.Ct. 55 (1990).

In short, the issue concerning notice which the Petitioner has attempted to raise is governed by previous cases of this Court and is not of sufficient importance to warrant this Court's attention.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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